IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 15311 of 2007(W)

PETITIONER:

N.J. STEPHEN, PRESIDENT,
BOARD OF DIRECTORS, NEDIYANGA SERVICE
CO-OPERATIVE BANK LTD., NO.LL 84,
NHAROLICAL, SREEKANDAPURAM, KANNUR DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (G), KANNUR.

3. NEDIYANGA SERVICE CO-OPERATIVE
BANK LTD.NO.LL 84, NHAROLICAL,
SREEKANDAPURAM, KANNUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

R1 & R2 BY GOVERNMENT PLEADER SMT. ANU SIVARAMAN.
SRI.JAMES KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.15311/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : TRUE COPY OF THE NOTICE NO.6034/06/C.R.P.(2) DATED 31.10.2006.

EXT. P2 : TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER DATED 13.11.2006.

EXT. P3 : TRUE COPYOF THE STATEMENT GIVEN BY THE PETITIONER DATED 6.12.2006.

EXT. P4 : TRUE COPY OF THE ORDER NO.6034/06/C.R.P.(2) K.DIS. DATED 19.12.2006.

EXT. P5 : TRUE COPY OF THE APPEAL FILED BEFORE THE GOVERNMENT DATED 27.12.2006 ALONG WITH CHALLAN RECEIPT.

EXT. P6 : TRUE COPY OF THE STAY PETITION FILED BEFORE THE GOVERNMENT DATED 27.12.2006.

EXT. P7 : TRUE COPY OF THE JUDGMENT IN W.P.(C). NO. 73/2007 DATED 2.1.2007.

EXT. P8 : TRUE COPY OF G.O.(RT) NO. 303/2007/CO.OP. DATED 27.4.2007.

K.M.JOSEPH, J.

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WP.(C) No.15311 of 2007

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Dated this the 10th day of September, 2007

JUDGMENT

Petitioner approached this court challenging Exts.P4 and P8. Declaration is sought that the petitioner is not disqualified in terms of Rule 44(1)(c)(i) as found by respondents 1 and 2. Case of the petitioner in brief is as follows:

Petitioner is a member of the third respondent Bank and thereafter he was elected as member of the Board of Directors and thereafter as President of the Managing Committee. Petitioner's father availed a loan. He died in the year 1997. According to the petitioner he is not a surety or guarantor and there was no default at the time of the death of the father. Thereafter arbitration proceedings were initiated against the mother and the petitioner, even though there were six children for the deceased. It is stated that arbitration award was passed as prayed for. It is further stated that petitioner and the mother were party respondents in the arbitration proceedings obviously to represent the estate of the deceased even though no property is

devolved on the petitioner. It is further stated that after the passing of the award the chitty account was closed and the account in the other loan transaction has not been closed. Proceedings under Rule 44(1)(c)(i) were initiated, to which petitioner submitted Ext.P2 reply. There was a notice for hearing and petitioner gave Ext.P3 statement. Ext.P4 is the order disqualifying the petitioner. Petitioner preferred Ext.P5 appeal and thereafter Ext.P8 is the order passed by the Government. Petitioner challenges Exts.P4 and P8.

2. Heard Government Pleader also.

'Defaulter' is defined in Rule 2(e) of the Co-operative Societies Rules. It is not in dispute that there is an award passed against the petitioner also. It may be true that the loan was availed by the father of the petitioner. But going by the definition of the word 'defaulter' it is clear that there is a decree obtained with the petitioner also on the party array. In such circumstances, petitioner would become a defaulter within the meaning of Rule 2(e) and it is shown as a reason for disqualifying the petitioner vide Ext.P4. In such circumstances I would think that it may not be open to the petitioner to contend that the

petitioner is not a defaulter or that he is not liable to be disqualified. I find no ground to interfere with Exts.P4 and P8.

The writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

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